

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SHANE LEE DIXON, # 1946623,
Plaintiff,

v.

SCOTT WISCH, et al.,
Defendants.

§
§
§
§
§
§
§

3:15-CV-2027-L-BK

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to [28 U.S.C. § 636\(b\)](#) and *Special Order 3*, this case was automatically referred to the United States Magistrate Judge. Plaintiff, a state inmate, filed a *pro se* petition for writ of mandamus. The Court granted Plaintiff's motion to proceed *in forma pauperis*, but did not issue process pending preliminary screening. For the reasons that follow, this case should be summarily dismissed.

I. BACKGROUND

Plaintiff requests mandamus relief against Tarrant County State District Judge Scott Wish and Tarrant County Clerk Thomas A. Wilder. He asserts they failed to provide him with the records needed to prepare and file a subsequent state habeas application under [TEX. CODE CRIM. PROC. ANN. art. 11.07](#). [Doc. 3 at 1-2](#).

II. ANALYSIS

Because Plaintiff is proceeding *in forma pauperis*, his pleadings are subject to screening under [28 U.S.C. §§ 1915\(e\)\(2\)\(B\) and 1915A\(b\)](#). Those statutes provide for *sua sponte* dismissal of a complaint if the Court finds that it (1) is frivolous or malicious, (2) fails to state a claim upon which relief may be granted, or (3) seeks monetary relief against a defendant who is immune from such relief. A complaint is frivolous when it "lacks an arguable basis either in law

or in fact.” [*Neitzke v. Williams*, 490 U.S. 319, 325 \(1989\)](#). A claim lacks an arguable basis in law when it is “based on an indisputably meritless legal theory.” [*Id.* at 327](#).

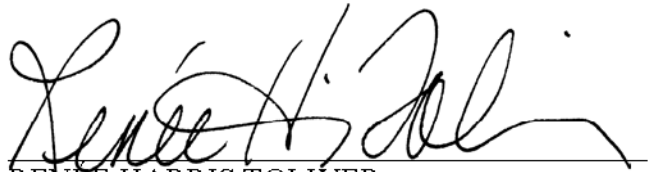
The Court liberally construes Plaintiff’s filings with all possible deference due a *pro se* litigant. [*Erickson v. Pardus*, 551 U.S. 89, 94 \(2007\)](#) (*pro se* pleadings are “to be liberally construed,” and “a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.”); *cf.* [FED. R. CIV. P. 8\(e\)](#) (“Pleadings must be construed so as to do justice”). Even under this most liberal construction, however, Plaintiff’s complaint is frivolous.

Federal courts are without power to issue writs of mandamus against state officers in the performance of their duties where mandamus is the only relief sought. *See* [*Moye v. Clerk, DeKalb County Sup. Court*, 474 F.2d 1275, 1275-1276 \(5th Cir. 1973\)](#). Here, Plaintiff’s petition can be construed only to seek mandamus relief against Judge Wisch and Mr. Wilder – that is, compelling them to provide him access to state court records. Accordingly, Plaintiff’s request for mandamus relief lacks merit and should be dismissed with prejudice as frivolous. *See* [*Santee v. Quinlan*, 115 F.3d 355, 357 \(5th Cir. 1997\)](#) (affirming dismissal of petition for writ of mandamus as frivolous because federal courts lack the power to mandamus state officials in the performance of their duties).

III. RECOMMENDATION


For the foregoing reasons, it is recommended that the petition for writ of mandamus be summarily **DISMISSED** with prejudice as frivolous. See [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#); and [28 U.S.C. § 1915A\(b\)](#).

SIGNED July 14, 2015.


RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. See [28 U.S.C. § 636\(b\)\(1\)](#); [FED. R. CIV. P. 72\(b\)](#). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. See [Douglass v. United Services Automobile Ass'n](#), 79 F.3d 1415, 1417 (5th Cir. 1996).


RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE